Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
Cross Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Secretary

<u>Written Ex Parte Presentation</u>

Fort Myers Broadcasting Company ("FMBC") submits the following ex parte presentation in response to Comments of Coalition Broadcasters LIN Television Corporation, Raycom Media, Inc., Waterman Broadcasting Corporation and Montclair Communications, Inc. ("Coalition").

First, FMBC supports both rule models advanced by Coalition, the No Local Monopoly Rule and the Weaker Station Rule. Both of these models provide significant opportunities for duopolies in mid-to-smaller sized markets. Either model would permit competition among multiple duopolies in a market.

FMBC submits that fostering competition among multiple same-market duopolies should be the central consideration in the new Local Television Multiple Ownership Rule. The Commission can expect significant competitive distortions in a market such as Fort Myers-Naples, Florida, if it allows a duopoly of major network affiliates, without permitting competition from other similarly situated television duopolies. The Commission should allow maximimum competition from the largest possible number of duopolies, a result consistent with adoption of the No Monopoly Rule advocated by Coalition.

FMBC differs from Coalition on the matter of relaxing waiver standards. If the Commission provides across-the-board duopoly relief to broadcasters, there is no need for relaxing its waiver standards. There certainly is no need to redefine the "failing station" criteria for duopoly waivers.

In this connection, FMBC submits that Coalition seeks to redefine failing station without reasonable reference to the station's ability to attract audience and generate cash flow. Coalition advocates this redefinition because businesses can fail due to excessive debt, regardless of cash flow. However, the FCC duopoly waiver criteria already covers instances where stations cannot generate sufficient cash to meet debt service. These are not "failing" stations. These are failed stations. They are covered by the waiver criteria of Rule 73.3555(f)(Note 7)(1) pertaining to insolvent or bankrupt stations.

FMBC submits that the Commission will be well served by disciplined adherence to its presumptive waiver standards, regardless of the duopoly standard it ultimately adopts. Once the new duopoly rule sets the public interest benchmark, those seeking to depart from its standards for reasons of financial distress should make the type of substantial showing contemplated in the present rules. It makes no sense to adopt a new television duopoly standard and simultaneously repeal it through adoption of an over-broad presumptive waiver process.

Respectfully submitted,

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